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Governor

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Stephen A. Owens
Director

HAZARDOUS AIR POLLUTANTS RULE STAKEHOLDER MEETING SUMMARY

DATE: November 9, 2005
TIME: 9:30 a.m.
LOCATION: ASU Downtown Center, A 225-228
502 E. Monroe Street, Phoenix, Arizona

PUBLIC ATTENDEES

(See attached)

ADEQ STAFF

Nancy Wrona
Diane Arnst
Steve Burr
Ira Domskey
Kevin Force
David Lillie
Corky Martinkovic
Steve Peplau
Sherri Zendri

ADDITIONAL ATTENDEES

Kelly Cairo, Gunn Communications
Pat Clymer, Weston Solutions
Kevin Eldridge, Weston Solutions
Theresa Gunn, Gunn Communications
Gary Lage, Weston Solutions

AGENDA

- Opening Remarks
- Introductions and Meeting Overview
- Review of Responsiveness Summary
- Next Steps
- Adjourn

OPENING REMARKS

Nancy Wrona thanked stakeholders for attending this seventh stakeholder meeting and for their participation in the Hazardous Air Pollutants (HAPs) rulemaking process. She noted the agency's appreciation of the diverse views presented at the meetings.

INTRODUCTIONS AND MEETING OVERVIEW

Meeting facilitator Theresa Gunn reviewed the meeting purpose, explaining that the responsiveness summary is a report on how ADEQ has responded to stakeholder questions. She invited attendees to ask clarifying questions, but refrain from debate.

REVIEW OF RESPONSIVENESS SUMMARY

Northern Regional Office
1515 East Cedar Avenue • Suite F • Flagstaff, AZ 86004
(928) 779-0313

Southern Regional Office
400 West Congress Street • Suite 433 • Tucson, AZ 85701
(520) 628-6733

Steve Burr reviewed “Response to Stakeholder Comments.” He noted that the matrix is generally organized by subject matter, and addresses all comments received from stakeholders. The document is available on the ADEQ website at www.azdeq.gov/function/laws/draft.html#haps.

Ira Domskey explained that discussion regarding specific rule verbiage is addressed in the October 26, 2005 meeting summary.

Burr noted that changes to the rule include:

- clarification on alternative operating scenarios, and
- clarification of the exemption for electric steam generating units requested by the utilities and that the Department concludes is consistent with A.R.S. § 49-426.06(F) and section 112(n) of the Clean Air Act.

Highlights from Burr’s review of the responsiveness summary, comments and questions follow.

De minimis and Modification Comments

- #8: Burr reviewed the statutory authority in A.R.S. § 49-426.06 (B) for ADEQ to adopt de minimis amounts.
- Joe Mitikish, Arizona Attorney General’s Office, noted that basic principles of statutory interpretation support ADEQ’s authority.

Source Categories

- #36 (Burr): ADEQ will make an independent determination of appropriate SIC codes and will not allow sources to manipulate these codes in this program. There are objective standards provided in the SIC Manual.
- #27. **Question:** I do not understand the ADEQ response to adding asphalt batch plants. **Response:** ADEQ did not have the time or resources to address the issue adequately and will do so at the triennial review. This approach also allows the agency and the counties to become accustomed to the new program.
- #38. **Question:** What provision in statute determines that a case-by-case review is preferred? **Response:** A.R.S. § 49-426.06(C) requires imposition of MACT or HAPRACT by permit. Implementation on a case-by-case reflects a better read of the statute.
- #26. **Comment:** The agency response regarding caps and the assumptions on how they are modeled seems quite trite. Listing a cap on the Maricopa County form should not imply an obstruction.
- Modifications, from 10-26-05 meeting summary, p. 10. **Question:** Please clarify. **Response:** ADEQ does not intend to change the rule, and it would not be used as a trigger. The definition of modification is statutory and is not stated in Article 17. **Reply:** I would like to receive additional information on this issue in writing, especially regarding intent and sources at less than one ton per year not needing a permit revision.
- **Comment:** How does a source determine if an emissions increase is above .0001 pounds per year? **Response:** If the de minimis level is too small for a source to determine whether it has been exceeded, and a change results in any increase, ADEQ must assume that it is above this level. However, this approach does not assume that every change results in an increase. **Reply:** What if a change is made, but I believe there is no

increase? **Response:** If ADEQ can't prove that there is an increase, the modified facility will not be required to install HAPRACT.

Comments Related to the Modeling Process

- #57 and #58 (Burr): The process area boundary (PAB) as described is appropriate because areas outside the PAB are considered ambient air and open to visitors. These areas may also be sold to and developed by third parties, which could result in future chronic exposure issues. Additionally, a source has never been denied a permit due to this issue. A PAB is determined by access, such as a parking lot that is accessible to the public.
 - **Question:** What if there is a chain link fence, and we control access to the parking area? **Response:** This would depend on circumstances, such as the level of enforcement of the perimeter, and is determined on a case-by-case basis. PAB is defined in the permit application.
 - **Question:** Is PAB imposed in permit conditions? **Response:** No.
 - **Comment:** For some of us, the PAB is a contentious issue. Would the agency consider revisiting the policy, particularly regarding the role of natural and manmade barriers? This is a time consuming issue for sources in discussing the barrier issue. **Response:** ADEQ will take this as an action item to address outside of this rulemaking process.
- #51. **Question:** The ADEQ response directs us to another document. Where is this document? **Response:** The response document was completed earlier this morning and will be posted on the agency website by the end of the day on November 10.
- #45. **Question:** If the greatest risks noted in the agency response are posed by on-road vehicles, lawn & garden equipment, wood smoke and domestic solvents and utility equipment, why is so much attention being paid to industry HAPs? **Response:** This statute directs ADEQ to regulate primarily industrial sources. However, there have been other actions regarding mobile and other non-industrial sources, such as engine controls, fuels used, etc. Payson now requires EPA-approved wood stoves. **Reply:** Will ADEQ revisit this issue in 10-15 years and look at the cost to industry compared to the benefits? **Response:** Yes, we are required to conduct reviews of this nature. The five-year review must include a cost-benefit analysis.
- #62. **Question:** Regarding the use of 25 meters for the receptor, the response to this question states that the distance to maximum concentration varied by source. What was the actual location of the maximum concentration? **Response:** This can be found in the table posted to the Web site that shows the results of the modeling done by Weston.

Ambient Air Quality Concentration Comments

- #88 (Burr): The choice of risk level is a matter of policy. We believe we are meeting the statutory definition.
- #91. **Comment:** The underlying assumption here is that background concentrations cannot cause or contribute to adverse effects to human health. We don't agree with this assumption. **Response:** There is not scientific evidence showing we could reasonably anticipate cancer.

- **Reply:** EPA is in the process of reviewing data. **Response:** Because science does change, there are options for the risk management analysis, and a three-year review is required.
- **Reply:** I still disagree regarding scientific evidence, particularly regarding chloroform and cancer. **Response:** Anyone can petition the agency to change a rule at any time.
- **Comment:** Neither HAPRACT nor MACT get you to the 10^{-6} risk level. **Response:** Control technology standards do not guarantee safe concentrations.

There is no review for residual risks in this program.

- **Comment:** I understand the limitations of resources, but would encourage the agency to review other documents regarding inhalation studies, particularly as they compare to oral values.

HAPRACT Determination and HAPRACT vs. MACT

- #104 (Burr): The fact that HAPRACT can be more stringent than MACT is unavoidable in the way the rule is written. This situation would be rare, but could occur with an old MACT regulation. Therefore, we do allow sources to opt-in to MACT.
 - **Question:** What would happen if I had a permit and opted into MACT? **Response:** This would serve as your exemption.
 - **Question:** If a minor source opts into MACT, it would not mean that the source is opting in to Title V. **Response:** This is correct.
- #106. **Question:** Please clarify this comment about MACT sources. **Response:** The exemption covers an entire affected source that, as defined in Part 63, is subject to an emission limitation, even if there are portions of the affected source that are not subject to limitation. An emission limitation, as defined in R18-2-101 includes any measures designed to reduce emissions, including work practice standards.”
- **Question:** What about boiler emissions? **Response:** If there are no limits, the source would be potentially subject to the program. However, this can be addressed on a case-by-case basis.
- #101. **Question:** From an industry perspective, I foresee a lot of requests for permit revisions. How do you envision making all of these case-by-case determinations, and how will you address requests in a timely manner? **Response:** This program is subject to licensing timeframes. We recommend talking further to Eric Massey offline.
- **Question:** Could there be a library of HAPRACT online? **Response:** Yes, we could provide this, since we plan to provide guidance on these issues.

Risk Management Analysis (RMA)

- #113 (Burr): A source exempt from HAPRACT through an RMA still needs a permit. An example would be a general opacity standard.
 - **Question:** Will an RMA have to demonstrate that cancer risks do not exceed 10^{-6} ? **Response:** Yes.

Clustering – Collocation – Cumulative Impacts

- #113 (Burr): Statute allows ADEQ to address clustering in listing source categories. However the agency did not have the data necessary to determine whether sources in the same category contribute to concentrations within a particular area. The decision of

where to locate a business is not one ADEQ can influence. Permit decisions allow the agency to take Title VI issues into account.

- #125. **Question:** Please clarify this response. **Response:** Collocation is one element of the definition of a source. For a group of emitting activities to be considered a source, they must be (1) within the same two-digit SIC code, (2) owned or operated by the same person or persons under common control *and* (3) located on contiguous or adjacent properties, i.e. “collocated.” Activities that satisfy all three conditions of this definition are considered a single source, and their emissions are combined for purposes of determining applicability. Activities that are collocated but do not satisfy one or both of the other two conditions do not constitute a single source and will not be grouped for purposes of determining applicability.

Title VI – Environmental Justice

- #130 (Burr): ADEQ has concluded that the proposed HAPs rule will if anything result in disproportionate benefits to communities protected by Title VI and therefore does not raise environmental justice concerns..

Other Issues

- #140 (Burr): The agency understands the disappointment that the rule does not allow for addressing existing sources but believes that an incomplete rule is better than no rule at all.

Comments Regarding the Rulemaking Process

- #148 (Burr): The purpose of the stakeholder process is to get representation of varying interests in a program and is a means for undertaking a meaningful discussion. The formal rulemaking process offers opportunities for all members of the public to be heard.
 - **Comment:** The stakeholder process gives industry representatives an advantage because they attend meetings earlier in the process.

Deed Restriction Comments

- #156 (Burr): The draft rule does not necessarily require a deed restriction. It is necessary, however, to insure that future owners of sources continue to implement the measures.
 - **Question:** What other measures would qualify? **Response:** Many MSHA requirements would be examples.
 - **Question:** Another option would be ADEQ emphasizing these issues at time of transfer. Also, if the new owner didn’t comply, they would be subject to enforcement. **Response:** This assumes that the seller is willing to transfer the permit.
 - **Comment:** It seems that permittees should follow the permit. **Response:** The agency added this to allow for greater flexibility.

Additional Comments

- #160 (Burr): The agency currently does not have the ability to assess whether HAP emissions from particular sources result in “adverse environmental effects”.

- **Question:** At the time of the public comment period, will industry be required to prove that they are not harming the environment? **Response:** We have limited the RMA to health concerns.
- #162 (Burr): The exemption for increases in hours of operation or production applies solely to changes at an otherwise unaltered plant. Additionally, these sources were permitted based on potential to emit; otherwise, limitations on hours of operation would be built into the permit.
- #168 (Burr): A range of procedures can be specified within alternative operating scenarios.
- Kevin Eldridge noted that EPA is changing models, and when released, this will include new guidance on how to use the models, including rain caps.
 - **Question:** When there is an EPA change, how soon would it be incorporated into guidelines for this program? **Response:** The rule would need to be revised to pick up any new reference. This type of change would probably be part of the annual update to reflect changes to federal rules, rather than the triennial review.
 - **Question:** Would the rule preclude the use of new models? **Response:** No, these would be accepted under Tier 4.
 - **Comment:** The concept of “comparable methods as accepted by the director” might assist in adopting federal changes, and may provide for the use of non-guideline EPA modeling, and faster change or other flexibility to allow for change.

NEXT STEPS

Next steps in the rulemaking process include:

- ADEQ is currently circulating a notice of proposed rulemaking within the agency.
- December 2 is the target date for publication in the Administrative Register. There will be newspaper notices of the availability of the rule.
- Public hearings would be January 3, at 2 p.m., held concurrently at ADEQ and at the public library in Tucson.
- Public comment would be accepted through close-of-business on January 3. Comments must be addressed in the notice of final rulemaking.
- March of 2006 is the targeted submittal to GRRC.

Stakeholder questions and comments included:

- **Comment:** I ask that the agency consider a longer comment period, in part due to the upcoming holidays. This is a significant issue and represents one of the biggest changes in air rulemaking in some time.
- **Question:** When would compliance begin? **Response:** Rules are effective 60 days after submittal to the Secretary of State. Stakeholders interested in a different applicable date should make a comment during the public process. This would apply to a permit submitted after the effective date of the rule.
- **Comment:** I appreciate the work of ADEQ in this process and believe the agency has been receptive to the stakeholders. This has been an excellent process.

ACTION ITEMS

- Provide written clarification to the modifications section (from 10-26-05 meeting summary, p. 10) regarding intent and sources at less than one ton per year not needing a permit revision.
- Agency to consider revisiting the PAB policy regarding the role of natural and manmade barriers.
- ADEQ to provide an online library of HAPRACT options.

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November 9, 2005

PUBLIC ATTENDEES

Bert Acken, Lewis & Roca
Sean Aldrich, Intel Corporation
Darcy Anderson, Kleinfelder
Christopher Andrews, Andrews
Environmental Mgmt.
Sandy Bahr, Sierra Club Grand Canyon
Chapter
Ed Barry, Chemical Lime
Ann Becker, Pinnacle West Capital Corp
Pat Birnie, EJAG
Jennifer Botsford, AZDHS-DEH
Al Brown, ASU Environmental Technical
Management
Vi Brown, Prophecy Consulting Group
Dan Casiraro, SRP
Jo Crumbaker, Maricopa County Air
Quality Dept.
Stan Curry, Gallagher & Kennedy
Cosimo DeMasi, Tucson Electric Power
Kara Downey, Arizona Electric Power
Cooperative
Jerry Dumas, Raytheon Missile Systems
Ken Evans, Phelps Dodge Corporation
Don Gabrielson, Pinal Air Quality
Richard Grimaldi, Pima County DEQ
Johanna M. Kuspert, Maricopa County Air
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Brett Lindsay, Phoenix Cement Co.
Jeremy A. Lite, Quarles & Brady Streich
Lang LLP
Eran Mahrer, APS/PNW
Jenn McCall, Freescale Semiconductor
Frank Mendola, CEMEX
Joe Mikitish, Attorney General's Office
Pam Norris, SCA Tissue
Brian O'Donnell, Southwest Gas
Krishna Parameswaran, ASARCO LLC

Anu Pundari, El Paso Natural Gas
Kathleen Sommer, ADOT
Joyce Tsuji, Exponent
James Tunnell, AZ Assoc. of Industries
Kathleen Whalen, Arizona League of
Conservation Voters
Jeff Yockey, Tucson Electric Power
Linda Young, Intel